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15 **UNITED STATES DISTRICT COURT**

16 **NORTHERN DISTRICT OF CALIFORNIA**

17 **SAN JOSE DIVISION**

18 VIAVI SOLUTIONS INC.,

19 CASE NO. 5:21-cv-06655-EJD

20 Plaintiff,

21 v.

22 PLATINUM OPTICS TECHNOLOGY INC.,

23 **DEFENDANT PLATINUM OPTICS
TECHNOLOGY INC.'S MOVING
SEPARATE STATEMENT IN SUPPORT OF
ITS MOTION FOR SUMMARY
JUDGMENT OF NON-INFRINGEMENT
(redacted version of motion sought to be filed
under seal)**

24 Defendant.

Pursuant to Federal Rule of Civil Procedure 56 and Section V of Judge Edward J. Davila's Standing Order for Civil Cases (August 31, 2022), defendant Platinum Optics Technology Inc. (PTOT) provides the following Moving Separate Statement in support of its motion for summary judgment of non-infringement.

Fact No.	PTOT's Undisputed Facts / Supporting Evidence	Viavi's Response / Supporting Evidence
Counterclaims 1-3 Declaratory Judgment of Non-Infringement of the '269, '526, and '794 Patents		
1.	<p>In August 2021, Viavi moved to amend its Infringement Contentions in Case No. 20-cv-05501 (the -5501 Action) claiming that it located a "non-Viavi" filter in an [REDACTED] product in the U.S. Specifically, Viavi asserted that "Viavi believes it [through its counsel has] located one Infringing PTOT Filter in [REDACTED] purchased in the United States in July."</p> <p>-5501 Action, ECF 103-4 (Motion to Amend Contentions) and 103-6 (Hector Dec.); -5501 Action, ECF 115 (Opposition); -5501 Action, ECF 130 (Reply); -5501 Action, ECF 168 and 169 (Order denying Viavi's motion).</p>	
2.	<p>Viavi has not identified any PTOT filters on sale in the United States and has only identified one non-Viavi filter in the United States. PTOT has disputed that the "non-Viavi" filter that Viavi alleged to have located is PTOT's filter.</p> <p>-5501 Action, ECF 114-4; Viavi 1st Supp. Resp. to PTOT's 1st Set of Interrogs. (Oct. 7, 2022) (Bloch Dec., Ex. C) at 8, 11.</p>	
3.	<p>Since Viavi moved to amend its Infringement Contentions in the -5501 Action, Viavi has concluded that [REDACTED] [REDACTED] [REDACTED]</p> <p>Viavi 1st Supp. Resp. to PTOT's 1st Set of</p>	

1	Interrogs. at 11 (Oct. 7, 2022) (Bloch Dec., Ex. C) at 8, 11.	
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3	4. PTOT manufactures bandpass filters referred to by [REDACTED] project names [REDACTED] [REDACTED] the former also being known as [REDACTED] while the latter are also known as [REDACTED]	
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9	5. From PTOT's perspective, the "alternative names" have no meaning to the two types of PTOT filters, [REDACTED], that are [REDACTED] "qualified."	
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14	6. PTOT sells the [REDACTED] filters <i>only to</i> [REDACTED] [REDACTED] (collectively, "PTOT's customers"), each of which is located in Asia.	
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21	7. PTOT manufactures and sells the [REDACTED] filters in response to purchase orders received from PTOT's customers.	
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26	8. PTOT manufactures and sells the [REDACTED] filters exclusively in Asia and does not sell or ship the [REDACTED] filters to any entity in the United States.	
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1	2022) (Bloch Dec., Ex. G) at 18; ECF 1 at ¶ 20.	
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3	9. PTOT does not sell the [REDACTED] filters to [REDACTED] Lin Dep. Tr. (Bloch Dec., Ex. H) at 22:9- 26:20, 66:23-67:8, 125:24-126:1; PTOT 1st Supp. Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex. A) at 2-4, 14-15.	
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8	10. For PTOT to sell the [REDACTED] filters to its customers, the filters have to meet [REDACTED] technical requirements, as set forth by Apple (and not PTOT) in [REDACTED] specifications such as the [REDACTED] [REDACTED] that PTOT provides no input for. Lin Dep. Tr. (Bloch Dec., Ex. H) at 28:25- 35:8, 41:4-42:6, 44:6-45:22, 67:10-20, 76:7- 12; PTOT 1st Supp. Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex. A) at 5-6, 12.	
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15	11. PTOT and [REDACTED] have entered into a [REDACTED] [REDACTED] which sets forth [REDACTED] [REDACTED]. It does not provide for sale of goods directly to [REDACTED]. [REDACTED] (Bloch Dec., Ex. I) at 1, ¶¶ 1.2, 1.6, 2.2(e), 8.1(a); Lin Dep. Tr. (Bloch Dec., Ex. H) at 69:18-22.	
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21	12. The [REDACTED] states that [REDACTED] [REDACTED] [REDACTED] (Bloch Dec., Ex. I) at 1.	
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25	13. PTOT's customers (and not [REDACTED]) verify whether PTOT's filters comply with the specifications each time PTOT ships the filters to the customers and inform PTOT of quality issues related to non-compliance. Lin Dep. Tr. (Bloch Dec., Ex. H) at 29:14-	
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1	35:8, 44:24-45:7, 124:3-126:11, 147:8- 149:23; [REDACTED] (Bloch Dec., Ex. I) at ¶ 1.2.	
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3	14. PTOT does not own or control any of 4 PTOT's customers and has no right to, and 5 does not, direct where its customers sell products that include the [REDACTED] filters. Lin Dep. Tr. (Bloch Dec., Ex. H) at 28:25- 6 33:25, 58:14-16, 86:21-88:2, 136:3-138:22, 7 157:2-9, 162:21-164:22; PTOT 1st Supp. 8 Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex. A) at 12-13.	
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10	15. PTOT does not track how its customers use 11 PTOT's filters and has no information concerning where its customers sell products 12 that include the [REDACTED] filters. PTOT does not know where its filters go after being sent to its customers. Lin Dep. Tr. (Bloch Dec., Ex. H) at 54:21- 13 55:7, 55:14-56:6, 58:2-59:9, 136:3-138:22, 14 141:9-145:11, 157:2-9, 163:9-12, 164:11-22; 15 PTOT 1st Supp. Resp. to Viavi's 1st Set of 16 Interrogs. (Sept. 25, 2022) (Bloch Dec., Ex. 17 A) at 2-8, 14-15.	
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19	16. PTOT has no insight into or knowledge as to 20 how [REDACTED] or its approved suppliers select 21 components for incorporation into [REDACTED] mobile devices. Lin Dep. Tr. (Bloch Dec., Ex. H) at 58:2- 22 59:9, 136:3-22, 138:23-141:4; PTOT Resp. 23 to Viavi's 2nd Set of Interrogs. (Bloch Dec., 24 Ex. B) at 5-7.	
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26	17. [REDACTED] Non-Party [REDACTED] Supp. Resp. to Viavi's 27 Subpoena (Oct. 7, 2022) (Bloch Dec., Ex. D) at 18.	
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1 2 3 4 5 6	18. [REDACTED] Resp. to Viavi's Subpoenas (Bloch Dec., Ex. E) at 5.	
7 8 9 10 11 12 13 14	19. [REDACTED] [REDACTED] Dec. (Bloch Dec., Ex. F) at ¶ 2.	
15 16 17 18 19 20 21	20. [REDACTED] [REDACTED] [REDACTED] Dec. (Bloch Dec., Ex. F) at ¶ 3.	
22 23 24 25 26 27 28	21. [REDACTED] [REDACTED] [REDACTED] [REDACTED] Dec. (Bloch Dec., Ex. F) at ¶ 5.	
	22. [REDACTED] [REDACTED] [REDACTED]	
	23. [REDACTED]	

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2	Non-Party [REDACTED] Supp. Resp. to Viavi's Subpoena (Oct. 7, 2022) (Bloch Decl., Ex. D) at 16.	
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4	24. PTOT is not aware that [REDACTED] [REDACTED] PTOT became aware that Viavi alleges that it is supplying filters to [REDACTED] because of Viavi's U.S. litigation against PTOT. Lin Dep. Tr. (Bloch Decl., Ex. H) at 59:20- 60:23, 108:4-111:10, 158:4-13.	
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11	25. PTOT does not proactively tell its customers that PTOT is qualified by [REDACTED]. PTOT's understanding is that [REDACTED] [REDACTED]	
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16	26. "On or about September 1, 2020, at [REDACTED] request, PTOT provided [REDACTED] with 15 [REDACTED] wafers diced to 20 mm x 20 mm squares, free of charge" (the [REDACTED] wafers"). PTOT 1st Supp. Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Decl., Ex. A) at 7; <i>see also</i> Lin Dep. Tr. (Bloch Decl., Ex. H) at 48:16-50:5, 97:23-100:5, 100:10- 103:7.	
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22	27. PTOT did not send the [REDACTED] wafers as part of the qualification process and does not know why [REDACTED] requested them because [REDACTED] did not specify the reason for its request." PTOT 1st Supp. Resp. to Viavi's 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Decl., Ex. A) at 7; Lin Dep. Tr. (Bloch Decl., Ex. H) at 44:12-45:22, 50:3-5, 97:23-100:5, 106:4-19, 125:20-126:11.	
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1 2 3 4 5 6	<p>28. The diced [REDACTED] wafers “could not be incorporated into an [REDACTED] Device without significant additional manufacturing steps that PTOT was never asked to perform and has not performed.”</p> <p>Lin Dep. Tr. (Bloch Decl., Ex. H) at 126:4-128:22; PTOT 1st Supp. Resp. to Viavi’s 1st Set of Interrogs. (Sept. 25, 2022) (Bloch Decl., Ex. A) at 7-8.</p>	
7 8 9 10 11 12	<p>29. Viavi itself admits that there is no watermark or other indicia showing where a particular filter comes from.</p> <p>-5501 Action, ECF 103-4 (Motion to Amend Contentions) at 5 FN4 (“[T]here is no product identifier or anything on the filter that would identify the manufacturer as PTOT.”).</p>	

13 Pursuant to § V.B.5 of the Standing Order, I attest that the evidence cited herein fairly and
 14 accurately supports the facts as asserted.

15
 16 DATED: October 28, 2022

GREENBERG TRAURIG, LLP

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 18 By: /s/ David S. Bloch

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